STATE OF MICHIGAN

COURT OF APPEALS

GENERAL CASUALTY COMPANY OF WISCONSIN, Plaintiff/Counter-Defendant-Appellee,	UNPUBLISHED February 2, 2010
v	No. 289180 Macomb Circuit Court
TDC INTERNATIONAL CORPORATION, Defendant/Counter-Plaintiff-Appellant.	LC No. 07-003448-CK

Before: Beckering, P.J., and Markey and Borrello, JJ.

PER CURIAM.

Defendant appeals by right the trial court's order granting plaintiff's motion for summary disposition pursuant to MCR 2.116(C)(10) and denying defendant's cross-motion for summary disposition in this declaratory action concerning whether insurance coverage for "advertising injury" required plaintiff to defend defendant in an underlying federal action challenging defendant's use of the term "EZ Moving & Storage" and "EZ Moving/Moving & Storage." We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Summary disposition may be granted under MCR 2.116(C)(10) when "there is no genuine issue of material fact, and the moving party is entitled to judgment . . . as a matter of law." This Court reviews a trial court's decision on a motion for summary disposition de novo. *Maiden v Rozwood,* 461 Mich 109, 118; 597 NW2d 817 (1999).

We agree with the trial court that plaintiff did not have a duty to defend defendant in the underlying action. An insurer's duty to defend is broader than the duty to indemnify. *American Bumper & Mfg Co v Hartford Fire Ins Co*, 452 Mich 440, 450, 550 NW2d 475 (1996). The insurer must defend if the allegations of the underlying suit arguably fall within the coverage of the policy. *Id*. at 450-451. "The duty to defend cannot be limited by the precise language of the pleadings. The insurer has the duty to look behind the third-party's allegations to analyze whether coverage is possible." *Radenbaugh v Farm Bureau Gen Ins Co of Michigan*, 240 Mich App 134, 137-138; 610 NW2d 272 (2000) (citations omitted). Doubt regarding whether the underlying complaint alleges a liability of the insurer under the policy must be resolved in the insured's favor. *Id*. at 138.

In this case, the allegations of the underlying complaint relate to defendant's use of names that were similar to the registered service mark of a competitor. The applicable policies provide coverage for "advertising injury," which is defined in pertinent part as "injury . . . arising out of one or more of the following offenses: . . . "[i]nfringing upon another's . . . trade dress . . . in your 'advertisement'." "The trade dress of a product is essentially its total image and overall appearance. It involves the total image of a product and may include features such as size, shape, color or color combinations, texture, graphics, or even particular sales techniques." *Citizens Ins Co v Pro-Seal Service Group, Inc*, 477 Mich 75, 77 n 1; 730 NW2d 682 (2007) (citation and quotation marks omitted). Although an insurer has a duty to "look behind" the allegations in the underlying complaint to analyze whether coverage is possible, *Radenbaugh*, *supra* at 137-138, the crux of this underlying complaint in this case involves the use of confusingly similar names, not an infringement of the underlying plaintiff's trade dress. Because there was no genuine issue of material fact, the trial court correctly granted plaintiff's motion for summary disposition and denied defendant's cross-motion.

In light of our conclusion, it is unnecessary to address defendant's challenge to the trial court's ruling concerning the "prior publication" exclusion or the applicability of the trademark exclusion in the policy.

We affirm. Plaintiff, as the prevailing party, may tax costs pursuant to MCR 7.219.

/s/ Jane M. Beckering
/s/ Jane E. Markey
/s/ Stephen L. Borrello